

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: APPLICATION FOR TELEPHONE
INFORMATION NEEDED FOR A
CRIMINAL INVESTIGATION

Case No. 15-XR-90304-HRL-1(LHK)

**ORDER UNSEALING PORTIONS OF
CLOSED HEARING TRANSCRIPT**

On June 24, 2015, the Court held a hearing on the government's appeal of U.S. Magistrate Judge Howard R. Lloyd's denial of an application for an order pursuant to 18 U.S.C. § 2703(d) authorizing the government to obtain historical cell site location information ("CSLI"). The hearing was conducted in two parts: first, a public hearing in which the Court heard argument from representatives of the government and the Federal Public Defender for the Northern District of California; and, second, a brief closed hearing in which only Court staff and representatives of the government were present. A transcript of that hearing was filed on August 7, 2015, with the transcript of the closed portion of the hearing filed under seal. ECF No. 35. The closed hearing transcript is eight pages long.

Having reviewed the transcript, the Court concludes that the portions of the closed hearing

transcript cited in the Court's July 29, 2015 order are not sealable. The portions of the closed hearing transcript cited do not reveal any information that might jeopardize an ongoing criminal investigation. Specifically, the Court mentions that the cellular service providers for the target cell phones are Verizon and AT&T. However, Verizon and AT&T are the two largest wireless providers in the United States with over 100 million subscribers each. Other citations to the closed hearing transcript relate to portions of the government's application that the government generally conceded was "boilerplate," Hr'g Tr. at 54:1, and therefore not unique to the government's investigation. The Court also cited to an exchange with the government during the closed hearing in which the Court discussed whether the government could "create" CSLI by calling a target cell phone. No part of this discussion is sealable. *See United States v. Forest*, 355 F.3d 942, 947 (6th Cir. 2004) (describing situation where federal law enforcement had dialed the defendant's cell phone without allowing it to ring and used the resulting CSLI to track his movements), *judgment vacated on other grounds sub nom. Garner v. United States*, 543 U.S. 1100 (2005).

The Court concludes further that the only portion of the eight-page closed hearing transcript that should remain sealed is the discussion at page 54:4-21. Accordingly, the Court hereby ORDERS that the closed portion of the transcript from the June 24, 2015 hearing be unsealed, except for page 54:4-21, which shall remain sealed.

IT IS SO ORDERED.

Dated: August 10, 2015



LUCY H. KOH
United States District Judge